IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 27293 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

URMILLABEN BABUBHAI SOLANKI - Petitioner(s)
Versus
THE COMMISSIONER OF POLICE VADODARA CITY, & 2 - Respondent(s)

==========

Appearance :
MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
MS.NISHA PARIKH AGP for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/08/2007

ORAL JUDGMENT

1. By this petition, under Article 226 of the Constitution, the petitioner has challenged the order dated 20.12.2006 of the Police Commissioner, Vadodara City, whereby, in exercise of his power under Sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-Social

Activities Act, 1985 (for short, “PASA”), the petitioner was ordered to be detained. As stated in the grounds of detention as well as affidavit-in-reply of Additional Director General of Police (SC/ST/Weaker Section/Human Rights), the petitioner was reported to have been involved in an offence under the Prohibition Act which was registered on 14.12.2006 as III-C.R.No.1010/06 in Makarpura Police Station, and he was arrested on 17.12.2006 and released on bail thereafter. It is, on that basis, stated that the petitioner was involved in bootlegging activities and liquor being injurious to health and likely to create danger to health of public, public order was disturbed. Thus, the main ground of detention sought to be made out on the basis of a solitary case of alleged offence under the Prohibition Act, 1949 involved stock of 184 bottles of so called English liquor in sealed bottles which was found from the shed used as residence of the petitioner. The petitioner was not even found around the stock of liquor at the time the stock was seized, according to the F.I.R. registered as III-C.R.No.1010/06.

2. In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activities of bootlegging by the petitioner substantiated the

assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing her detention were legal and justified.

3. However, as held by this Court in **Amarbhai Kanjibhai Nayak V/s. Commissioner of Police Ahmedabad City & Ors. [1999(3)G.L.R.2703]** and in **Sohanlal Surajaram Visnoi V/s. State of Gujarat and others [2004(2)G.L.R. 1051]**, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of Sub-Section (4) of Section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life

or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction.

4. Therefore, in the facts and circumstances, impugned order dated 20.12.2006 of preventive detention is found and held to be unsustainable in law, and hence set aside with the direction that the petitioner shall be set at liberty forthwith unless required in connection with any other case to be detained in custody. Rule is made absolute with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

Hitesh